



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 9, 1991

Mr. Richard D. Monroe
Associate General Counsel
State Department of Highways
and Public Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR91-489

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13057.

The State Department of Highways and Public Transportation (the department) received an open records request for all documents pertaining to "accidents" that have occurred at a specified railroad crossing. You contend that the department may withhold the requested information pursuant to section 3(a)(3) of the Open Records Act.

To secure the protection of section 3(a)(3), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. Open Records Decision Nos. 331, 328 (1982).

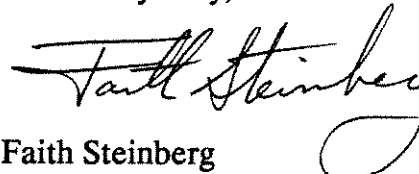
In addition to the requested documents, you have submitted to this office a copy of a notice of claim made pursuant to the Texas Tort Claims Act from the requestor on behalf of her client, whose son was killed at the railroad crossing in

question. *See* Civ. Prac. & Rem. Code § 101.001 *et seq.* You have therefore demonstrated that the requested information relates to reasonably anticipated litigation.

Included with the documents submitted for review are several "Texas Peace Officer's Accident Reports." Section 47 of article 6701d, V.T.C.S., makes these reports as well as any supplements to these reports, including witness statements, public information. *See* Open Records Decision No. 43 (1974) (copy enclosed). Because the public's access to these reports is governed by article 6701d, section 3(a)(3) does not protect these reports from required public disclosure, despite the fact that they relate to reasonably anticipated litigation. *See also* Open Records Decision No. 451 (1986). The department may, however, withhold the remaining information submitted to this office pursuant to section 3(a)(3).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-489.

Yours very truly,



Faith Steinberg
Assistant Attorney General
Opinion Committee

FS/RWP/lcd

Ref.: ID# 13057
ID# 13226

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